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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,645	03/07/2001	Troy Michael Runge	16,670	5221

7590

04/03/2003

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EXAMINER

HALPERN, MARK

ART UNIT

PAPER NUMBER

1731

14

DATE MAILED: 04/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/800,645

Applicant(s)

RUNGE ET AL.

Examiner

Mark Halpern

Art Unit

1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/24/03, 2/6/03, 3/5/03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-19, 22-33 and 35-76 is/are pending in the application.
- 4a) Of the above claim(s) 35-76 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-19, 22-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>10, 12, 13</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

- 1) Acknowledgement is made of Amendment received 1/24/2003, Paper No. 11.
Applicants amend claims 3, 6, 8-13, and cancel claims 7, 20-21, 34.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- 2) Claims 1-2, 4-5, 8-19, 22-23, 25, 27-33, are rejected under 35 U.S.C. 102(b) as being anticipated by Graef (4,853,086).

Claims 1-2, 4-5, 8, 14-15, 22-23, 25, 27, 29-32: Graef discloses a method of making a fluff pulp in which the partially dried web is treated with chemical additives, such as, glycol and aldehyde, and then the web is dried (Abstract). Even though Graef is silent with respect to the percentage of retention of the additives after re-dispersing, this property is inherent to the invention, because the same type of additives are added to the same type of fibers at the same rate and at the same location as claimed. Graef teaches the use of the fibers in towels, which implies that the fibers need to be dispersed/re-dispersed in water for the making of the product (col. 1, lines 6-30). The chemical additives addition is in the range of about 1-20 %, 5-50 kg/t of dry fiber (col. 3, lines 30-40).

Claims 9-13, 33: the chemical additives disclosed are softeners, absorbency agents, wet and dry strength agents (col. 3, line 15, to col. 10, line 45).

Claims 16-17: the final product of the process is of about 3-12 % moisture (Example 1, col. 5, lines 50-55), which calculates to a consistency between about 88 and about 97 percent.

Claim 18: sufficient time is being disclosed for the chemical addition into the web fibers (col. 5, lines 38-55).

Claim 19: a paper sheet formation is disclosed in Example 1 (col. 5, lines 38-55).

Claim 28: enhanced quality of the product are disclosed in the Abstract.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3) Claims 3, 6, 24, 26, are rejected under 35 U.S.C. 103(a) as being unpatentable over Graef. Graef is applied as above for claims 1, 22, Graef fails to disclose that the chemically treated fibrous web includes a gradient or a z-directional gradient of the chemical additive. It would have been obvious, to one skilled in the art at the time the invention was made, that the chemically treated fibrous web includes a gradient or a

z-directional gradient of the chemical additive, since the chemical is absorbed into the fibers and the absorption of the chemical additive into the web is occurring in all direction including the z-direction.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4) Claims 1, 22, are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09/802,529. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1, 22, of the present application differs from claim 1 of application 09/802,529, in part (d) only, in that in the copending application, the chemical additive is recited as "water insoluble", and in the copending application, the chemical retention rate is from "25 to about 100 percent" vs. "10 to about 100 percent" in the present application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Amendment

- 5) Claims 3, 6-7, 9, rejection under 35 U.S.C. 112, second paragraph, is withdrawn in view of amended and cancelled claims.
- 6) Claims 1-6, 8-19, 22-33, rejection under 35 U.S.C. 102(a) as being anticipated by Goulet (WO 00/66835), is withdrawn in view of applicants' argument.
- 7) Claims 20-21, 34, rejection under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Goulet, is withdrawn in view of cancelled claims.

Conclusion

- 8) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Halpern whose telephone number is 703-305-4522. The examiner can normally be reached on Mon-Fri, (9:00-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 703-308-1164. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7718 for regular communications and 703-305-3599 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

MH

Mark Halpern
Patent Examiner
Art Unit 1731

April 2, 2003


STEVEN P. GRIFFIN
SUPERVISORY PATENT EXAMINER
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